

State of California  
Regional Water Quality Control Board  
North Coast Region

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August 22, 2002

EXECUTIVE OFFICER'S SUMMARY REPORT  
9:00 a.m., September 26, 2002  
North Coast Regional Water Board Hearing Room  
5550 Skylane Boulevard, Suite A  
Santa Rosa, California

ITEM:

SUBJECT: Public Hearing to Consider Adoption of an Updated Waste Discharge Requirements Waiver Policy (Resolution No. 2002-0080).

**Introduction:**

This hearing is being conducted in compliance with the provisions of California Water Code (CWC) Section 13269, for the purpose of reviewing all existing waivers of waste discharge requirements issued by the North Coast Regional Water Quality Control Board (Regional Water Board), with the exception of waivers of waste discharge requirements for timber harvest operations. The issue of regulatory waivers for timber harvest operations will be the subject of a separate public hearing (scoping hearing) to be conducted following the conclusion of this hearing.

Upon completion of the waiver review process, which is the subject of this staff report, and after considering all public testimony, the Regional Water Board may: (1) eliminate specific categories of waivers and direct staff to draft general or individual waste discharge requirements, which upon adoption by the Regional Water Board will be used in the future in lieu of the eliminated categorical waivers; (2) renew specific categories of waivers after updating them to reflect current conditions; and/or, (3) adopt new categorical waivers. If taken, the above actions will be formalized by the adoption of an updated Waste Discharge Requirements Waiver Policy, (Draft Resolution No. 2002-0080, Attachment 1).

**Background:**

CWC Section 13260 requires that any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system, shall file with the appropriate regional water board a report of waste discharge, containing the information which may be required by the regional water board.

CWC Section 13264 authorizes regional water boards to prescribe waste discharge requirements.

CWC Section 13269 authorizes regional water boards to waive reports of waste discharge and waste discharge requirements if the waiver is not against the public interest.

CWC Section 13269 was amended in 1999 by Senate Bill (SB) 390. The amendments:

- Require regional water boards to review their waiver policies at public hearings;
- Require renewal of waiver policies by January 1, 2003. Failure to renew waivers will automatically result in their expiration. The duration of waivers now may not exceed five years;
- Require the conduct of a public hearing prior to renewing waiver policies to determine whether the discharge for which the waiver policy was established should be subject to general or individual waste discharge requirements;
- Direct regional water boards to require compliance with the conditions pursuant to which waivers are granted;
- Require renewal of waivers every five years.

This Regional Water Board has issued numerous waivers of waste discharge requirements over the years.

The Board's policies for issuing waivers are contained in two types of documents, (1) the Water Quality Control Plan for the North Coast Region (Basin Plan) and (2) Resolution Nos. 87-113, 89-131, and 92-135. Each of the waiver categories described in the Regional Water Board's current waiver policies (with the exception of the timber harvesting waiver category) are being reviewed at this public hearing in response to the requirement for review described in CWC Section 13269 as amended by SB 390.

#### **Discussion:**

Staff has completed the review of all waiver categories (with the exception of the timber harvesting waiver category) in accordance with the provisions of amended CWC Section 13269 and has determined that the Regional Water Board waiver categories currently in effect should be divided into two groups for consideration of Regional Water Board action.

The first group of categorical waivers consists of those proposed for elimination and replacement by individual or general waste discharge requirements. These waiver categories and staff's proposed recommendations are shown in Table A. Staff has reviewed these waiver categories and, in each case, has determined that they are no longer appropriate and should be (or already have been) replaced by individual or general waste discharge requirements. Accordingly, staff recommends that the waiver categories shown in Table A be eliminated by allowing them to expire on January 1, 2003, or by rescinding them in conjunction with the adoption of individual or general waste discharge requirements for each waiver category. Draft Resolution No. 2002-0080 addresses the expiration or rescission of Table A categorical waivers

The second group of categorical waivers consists of those proposed for amendment and renewal. These waiver categories and staff's proposed recommendations are shown in Table B. Staff has reviewed the Table B waiver categories and, in each case, has determined that they should not be subject to general or individual waste discharge requirements at this time and that the issuance of waivers for these categories of waste is not against the public interest. Therefore, staff recommends that these waiver categories be amended as proposed and renewed for a period not to exceed five years by the adoption of Draft Resolution No. 2002-0080.

In addition, staff is proposing the creation of new waiver categories for (1.) Pumped/Drained Water from Storage Tank Excavations, (2.) Soil Stabilizing Agents, and (3.) Winery Operations. Staff has concluded that waste discharges associated with the above categories should not be subject to general or individual waste discharge requirements and that the issuance of waivers for these categories of waste is not against the public interest provided that all waiver conditions are met. These proposed new waiver categories and waiver conditions are shown in Table C. Staff recommends that the proposed new waiver categories and waiver conditions be added to the Regional Water Board's waiver policy by the adoption of Draft Resolution No. 2002-0080.

#### **Economic Analysis:**

The Board has expressed some interest in the question of when and where economic analyses are required in the Board's decision-making. There are no sources of law that mandate an economic analysis in the adoption of a conditional waiver. The Board is likely, however, to receive information from the public on this point, and would be free to give that information all due consideration. The Board may wish to have staff provide an analysis of any information presented by the discharger community or community interest groups, or to seek out additional information, and could provide specific direction and time for staff to conduct such analysis.

#### **General Waiver Conditions for All Waiver Categories:**

Staff recommends that the following general waiver conditions be applied to each waived discharge:

1. The discharge shall comply with all applicable provisions of the Basin Plan.
2. The discharge shall not create a pollution, contamination, or nuisance, as defined by Section 13050 of the California Water Code.
3. The discharge of any waste not specifically regulated by this waiver is prohibited.
4. The discharger shall implement a monitoring and reporting program when directed to do so by the Regional Water Board Executive Officer.
5. The discharger shall allow Regional Water Board staff entry onto the affected property for the purpose of determining compliance with waiver conditions.

#### **Waiver Tracking and Compliance Program:**

Regional Water Board staff will develop and implement a waiver tracking program that includes applications for waivers (Reports of Waste Discharge or equivalent documents),

notices of issuance of waivers, compliance inspection documentation, and any self monitoring reports submitted by waiver recipients.

Compliance inspections shall be conducted in accordance with a schedule to be developed by the Regional Water Board Executive Officer.

**Summary and Conclusions:**

In compliance with the provisions of amended CWC Section 13269, Regional Water Board staff has reviewed all existing categorical waivers of waste discharge requirements and has concluded that it is appropriate to eliminate specific waiver categories, update and renew others, and establish new waiver categories for specific waste discharges. Resolution No. 2002-0080 proposes a new Regional Water Board waiver policy. The resolution does not address the Timber Harvesting categorical waiver

**PRELIMINARY STAFF RECOMMENDATION:**

Staff recommends that the Regional Water Board consider all public testimony and, if appropriate, adopt Resolution No. 2002-0080 which would establish a new Regional Water Board Waste Discharge Requirements Waiver Policy for the next five years. As Resolution No. 2002-0080 does not address Timber Harvesting, staff recommends that Board action on this waiver category be deferred to a specific future date.